

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 32**

**(Los Banos, California)**

**SANTOS FORD LINCOLN MERCURY**

**Employer**

**and**

**Case 32-RC-4803**

**MACHINISTS LOCAL LODGE 1528,  
DISTRICT LODGE 190 OF NORTHERN  
CALIFORNIA, affiliated with  
INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE  
WORKERS, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>1</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a California corporation, is engaged in the retail sale and service of new and used automobiles at its Los Banos, California facility, and that during the past 12 months it has had gross retail

sales in excess of \$500,000, and, during the same period, it purchased and received goods valued in excess of \$5,000 directly from outside of the State of California. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner claims to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Petitioner seeks to represent a unit consisting of eight technicians and one “luber,” excluding all other employees, guards, and supervisors as defined in the Act. The Employer, however, argues that the Union’s proposed unit is inappropriate, and that the “only” appropriate unit would be a unit consisting of the entire service department which includes not only the eight technicians and one luber, but also two service advisers, hereinafter also referred to as advisers.<sup>2</sup>

The Santos Ford Lincoln Mercury dealership employs 40 persons, and has been in operation for nearly four years. The dealership is comprised of four departments: the sales, parts, service, and business departments. The service department consists of one service manager, eight technicians, one luber and two service advisers. The parts

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<sup>1</sup> Only the Employer filed a brief, which has been carefully considered.

<sup>2</sup> At hearing the Employer argued that there were two possible appropriate units: a unit consisting of the entire service department; or, in the alternative, a unit consisting of only the technicians. In its brief, however, the Employer argued that the only appropriate unit would be a unit consisting of the entire service department.

department consists of one “service helper”/porter employee and one parts manager. The record is silent as to the other departments.

The dealership is comprised of three separate structures. Located in the front of the main building are the showroom, display area, sales offices, and waiting area. The restrooms, conference room, parts department and service advisers’ office are housed in the rear of the main building. The service advisers’ office has a window where the technicians and luber go to pick up their repair or lube orders and punch their time cards. The service advisers’ office also has a door leading to the service department building. The service department building is located to the southeast of the main building and consists of eight bays, a storage area, restroom, and lockers. The luber works at the first service bay located at the northernmost part of the service department building. The technicians work in bays located in the area adjacent to and just south of the bay where the luber works. The wash rack area, the third structure, is located to the southwest of the main building.

The service department is open, and the advisers work, Monday through Friday from 7:30 a.m. to 5:30 p.m., and Saturday from 8 a.m. to 4 p.m. The technicians and luber work Monday through Friday from 8 a.m. to 5 p.m. and Saturday from 8 a.m. to 4 p.m. The technicians, luber and advisers are supervised by Frank Manton, the service department manager.<sup>3</sup> Manton reports to general manager, Richard Gonzalvez.

Technicians are paid hourly based on a flat-rate system which compensates the them for the hours specified for each repair. The Employer also provides incentives to the

technicians during the slower winter months by offering them a commission on any repairs they diagnose and perform on vehicles which were not included in the initial repair order. The luber is paid hourly, not on a flat-rate system, and is not eligible to participate in the commissions offered to the technicians during the slow months. The service advisers are paid on commission which is based on the total dollar sales on labor only. All of the employees in the service department are covered by the same company-wide health plan, 401(k) plan, and employee handbook. Likewise, they all benefit from the same holidays and accrue vacations in the same manner. In addition, they are all eligible to receive discounts on new and used vehicles.

The record revealed that while the Employer prefers to hire technicians from other Ford stores who have certifications or who have attended training programs, this is not an absolute requirement for new applicants. The same is true for service advisers. There are a total of eight Ford certifications for both the technicians and service advisers, and a total of nine Automotive Service Excellence (ASE) certifications for technicians. The Ford certifications for the technicians are different than the certifications for the service advisers. The technician certifications are geared towards training the technician for hands-on repair whereas the service adviser certifications focus on enhancing their ability to interpret the customer's needs and accurately relay that information to the technicians. Thus, the certifications for the technicians include subjects such as drive-ability, heating/air conditioning, front end and brake, steering, automatic transmission, engine repair, manual transmission, and electrical. The luber is not required to have Ford

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<sup>3</sup> The parties stipulated, and I find, that Frank Manton is a supervisor within the meaning of Section 2(11) of the Act.

certifications, training or previous experience in order to perform his duties, and Ford does not have any certifications specific to the luber classification.

The technicians are the only classification trained on, and who use, high-tech equipment and computers in the performance of their jobs. The least experienced technicians are limited in the kind of repairs they can perform; they can perform basic mechanical work, but they cannot get involved in any difficult diagnostic or electronic work such as that involved with automatic transmission repairs. Under Ford's "Blue Oval" program, the dealership is only reimbursed for warranty repair work if the technician who performed the repair is certified in the particular area of repair that was performed. Thus, advisers have a roster that indicates which certifications are held by which technicians; advisers assign repairs accordingly to ensure that the dealership receives reimbursement from Ford.

The person currently employed in the luber position is John Martin who has held that position for three months. Martin, who had no prior automotive experience, was trained by the service manager, Frank Manton. About ninety percent of the luber's time is spent doing lube, oil, and filter work; the remaining portion his day is spent moving cars to clear the driveway. The lube bay contains a vehicle lift or hoist, oil dispenser, oil drains, grease guns, and other equipment of this nature. The luber inspects, re-fills or replaces items such as the brake, master cylinder and window washer fluid, air and oil filters, and battery cables. A "lube" job takes anywhere from 20 to 40 minutes and the luber can do between 8 and 10 "lube" jobs per day. The luber is also responsible for rotating, balancing and replacing tires. Once the luber completes service of a vehicle, he signs a checklist to verify that he has completed all of the necessary work on a particular

vehicle. If the luber notices something wrong with the vehicle, such as leaks in the transmission, brake fluid, axle, wheel center or any other areas, he is to make a note of it so that the adviser can discuss the problem with a technician.

Advisers act as liaisons between the customers and the technicians and luber. The technician and luber bays each have a direct telephone line to the advisers' office. Advisers greet the customer in the driveway, gather customer information, determine the nature of the problem based on the customer's account and their own initial diagnosis, give the customer a repair estimate, and dispatch the job to the luber for maintenance or a technician for repair. From there, the technician diagnoses the vehicle and reports back to the adviser with the diagnosis. Thereafter, the adviser rewrites the estimate and contacts the customer for approval to do the repair work. Once the customer authorizes the repair, the adviser notifies the technician to proceed with the repair.

With respect to the luber, the advisers dispatch the job to the luber and will not talk with the luber again until the luber reports back to the adviser with the checklist and job completed. If a vehicle requires both lube work and repair by a technician, the luber will perform his part of the work, park the car outside of the lube bay and return the paper work to the adviser. Thereafter, the adviser will assign the vehicle to a technician to complete the repairs. In the alternative, repair work may be performed before the lube work.

When the service department has a heavy workload, advisers may assist the technicians in order to expedite the completion of repairs. For example, advisers have changed hoses and batteries, and pumped fuel but they are not skilled in performing repairs involving technical or more involved procedures. When the luber is not working,

the Employer will assign one of the less-experienced technicians to perform lube jobs that day. No technicians have become advisers.

Technicians are required to supply their own hand tools which range in value from \$15,000 to \$30,000. No other classification of employees is required to provide the tools necessary to perform their work. The luber uses a tool box supplied by the Employer which has an approximate value of \$200. Some of the service bays, including the one used by the luber, contain a lift which is used to elevate the vehicles.

All of the service department employees take their breaks in the service department bays at a portable picnic table. The uniforms for the service adviser consist of dark blue slacks, and a blue and white striped button-up shirt with the Ford logo and employee's name. The technicians and the luber wear virtually the same uniform as the advisers, with the only difference being in the shirt's color. There is no history of collective bargaining for any of these employees.

Based on the foregoing record, I find that the petitioned-for unit of technicians including the luber is an appropriate unit.

As noted, the Employer argues that the petitioned-for unit, of technicians and the luber, is not an appropriate unit for collective bargaining and, rather, that the "only" appropriate unit must comprise all of the service department employees including the advisers. In deciding the appropriateness of a bargaining unit, the Board first considers the union's petition and whether the requested unit is appropriate. Overnite Transportation Company, 322 NLRB 723 (1996). The Board, however, does not compel a petitioner to seek any particular appropriate unit. Id. The petitioned-for unit need only be an appropriate unit for purposes of collective bargaining, not the most appropriate

unit, and in representation proceedings, the unit sought by the petitioner is always a relevant consideration. Lundy Packing Co., 314 NLRB 1042, 1043 (1994). A union is, therefore, not required to request representation in the most comprehensive or largest unit of employees of an employer. Overnight, *supra* at 723.

In determining the appropriateness of a craft unit, “the Board has consistently found that mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive or motor service department and therefore may, if requested, be represented in a separate unit, excluding other service department employees.” See, Dodge City of Wauwatosa, 282 NLRB 459, 460, fn. 6 (1986). In deciding whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in formal training or apprenticeship programs, whether their work is functionally integrated with the work of the excluded employees, whether their duties overlap with the duties of the excluded employees, whether the employer assigns work according to need rather than on craft or jurisdictional lines and whether the petitioned-for employees have common interests with other employees, including wages, benefits, and cross-training. See Burns & Roe Services Corp., 313 NLRB 1307, 1308 (1994).

Applying the above factors to the instant case, it is clear that the service technicians constitute an appropriate craft unit. As in Fletcher Jones Chevrolet, 300 NLRB 875 (1990), where the Board concluded that the petitioned-for unit of service technicians was an appropriate craft unit, the technicians here effectively work in a homogenous group, possess skills distinct from the advisers, and have little in common with the advisers. For example, the technicians and luber, unlike advisers, require the use



of tools in performing their mechanical duties. Moreover, only technicians perform mechanical repair work, work that no other service employees are capable of doing. Although advisers do simple work to expedite the completion of a repair, only the technicians and luber perform actual repair and maintenance work on a regular basis. Further, while advisers perform repair work that is more difficult than that performed by the luber, the record is silent as to what “more difficult” work, in particular, the advisers have actually performed. In fact, the record established that advisers would not be capable of performing repairs involving “technical” or “more-involved” repairs. Moreover, unlike the advisers, technicians and the luber perform all of their work in the service department bays and have no contact with customers.

While service department employees all benefit from the same health, 401(k), and other benefits, and receive common supervision, other significant distinctions support a finding that the technicians and luber alone share a unique community of interest apart from other employees. For example, the technicians and luber are the only employees within this group who are paid hourly, either on a flat rate or straight hourly rate. The advisers, on the other hand, are paid by commission. The technicians and luber also work different hours than the advisers. Furthermore, the technicians’ and luber’s job duties are mechanical in nature while the advisers’ main function is customer service. In this regard, the technicians fill in for the luber on his days off. Also, the technicians’ training is quite different from the advisers’ customer relations training which, if anything, further supports a finding that the technicians constitute an appropriate craft unit.

The Employer relies on Graneto-Datsun, 203 NLRB 550 (1973), to support its claim that the “only” appropriate unit in service departments of automobile dealerships is one that encompasses the entire service department. Graneto-Datsun is distinguishable, however, from the instant case because the unions in that case had petitioned for a unit consisting of all service department employees. Moreover, Graneto-Datsun contains language to the effect that the Board has held that an overall unit of all service department employees is appropriate in situations where all the employees in the service and parts departments perform functions related to the service and repair of automobiles. However, in Dodge City of Wauwatosa, *supra* at 460, fn. 6, the Board characterized this statement as overbroad. The Board also stated there that the decisions with this type of sweeping, and not entirely accurate language, failed to consider other cases in which the Board consistently found that mechanics possessing unique skills and training constitute a group of craft employees within a motor service department and may, if requested, be represented in a separate unit, excluding other service department employees. Id.

Finally, the Employer argues that, because the unit proposed by Petitioner includes a luber, the petitioned for unit is not a craft unit. The Employer further claims that it is this inclusion of the lube technician which distinguishes this case from the finding of a craft unit in Fletcher Jones Chevrolet, 300 NLRB 875 (1990). The Employer’s argument, however, overlooks the Board’s inclusion of quick service technicians in the unit of technicians found appropriate in Fletcher. Id. at 876. Similar to the quick service technicians in Fletcher, the lube technician in the instant case performs lubrications, undercoats, tire rotations and other minor repairs. Moreover, the fact that the luber may not be able to perform the more complex diagnostic work performed by the

more veteran technicians is inapposite, since two of the technicians are similarly not allowed to perform these repairs. Although the luber is not as skilled as some of the more experienced technicians, he is engaged in mechanical work and, therefore, I find that the luber, John Martin, should be included in the unit. See Id.

In summary, and based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians and lubers employed by the Employer at its Los Banos, California facility; excluding all other employees, guards, and supervisors as defined in the Act.

There are approximately 9 employees in the unit found appropriate.

#### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations.<sup>4</sup> Eligible to vote are those in the unit who are employed during the payroll period ending immediately preceding the date of the Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are

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<sup>4</sup> Please read the attached notice requiring that election notices be posted at least three (3) days prior to the election.

employees who have quit or been discharged for cause since the designated payroll period, employees engaged

in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether or not they desire to be represented by MACHINISTS LOCAL LODGE 1528, DISTRICT LODGE 190 OF NORTHERN CALIFORNIA, affiliated with INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO.

#### **LIST OF VOTERS**

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties in the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care 359 Facility, 315 NLRB 359, 361 fn. 17 (1994). Accordingly, it is hereby directed that within seven (7) days of the date

of this Decision, two (2) copies of an election eligibility list containing the full names and addresses of all the eligible voters shall be filed by the Employer with the undersigned, who shall make the list available to all parties to the election. In order to be timely filed, such list must be received in the NLRB Region 32 Regional Office, Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before,

October 5, 2000. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570. This request must be received by the Board in Washington by October 12, 2000.

Dated at Oakland, California this 28<sup>th</sup> day of September, 2000.

/s/ James S. Scott

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